

ILLINOIS
COMMERCE COMMISSION
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DIRECT TESTIMONY

OF

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TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

In the Matter of Telecommunications Resellers Association v. Ameritech Illinois:
Complaint Against Enforcement of Unjust and Anti-Competitive Termination Penalties
in tariffs and contracts for ValueLink service and for modification of ValueLink tariffs
and contracts.

DOCKET NO. 00-0024

May 26, 2000

1 **INTRODUCTION**
2

3 **Q. Please state your name and business address.**

4 A. My name is A. Olusanjo Omoniyi and business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.
6

7 **Q. What is your occupation?**

8 A. I am a Policy Analyst in the Telecommunications Division of the Illinois
9 Commerce Commission (the "Commission").
10

11 **Q. Describe your educational and professional background.**

12 A. I graduated from Southern Illinois University at Carbondale with a Bachelor of
13 Arts degree in Cinema & Photography and Bachelor of Science degree in Radio-
14 Television in 1987. In 1990, I obtained a Master of Arts degree in
15 Telecommunications and a Juris Doctor degree in 1994, also from Southern
16 Illinois University at Carbondale. I am licensed to practice before the Supreme
17 Court of Illinois, United States District Court, Southern District of Illinois and
18 United States Court of Appeals for the Seventh Circuit.

19 I have been involved in various aspects of the telecommunications
20 industry for over a decade including internet development, systems integration,
21 broadcasting, long-distance telephone service resale and telecommunications
22 practice. I have been the owner, part-owner and legal advisor for an internet
23 access provider. I was one of the original founders of Internet Developers
24 Association (IDA) which has now metamorphosed into the Association of Internet

1 Professionals (AIP). I have been co-founder and part-owner of Bizhelp Services,
2 a computer systems integration and internet development business.

3 Prior to my employment at the Commission I was a reseller of pre-paid
4 calling cards for Southern New England Telephone Company and an agent of a
5 long distance telephone services reseller, TTE of Baltimore, Maryland, between
6 1996 and 1998. Upon my employment with the Commission, I divested all
7 interests in telephony businesses, telecommunications-related law practice and
8 removed all my business websites in order to avoid any conflict of interests.

9 Over the years I have educated myself about the telecommunications industry
10 through various sources such as the National Exchange Carrier Association, the
11 national trade association for common carriers; operations of major telephone
12 companies like Ameritech-Southwestern Bell, GTE, AT&T and BellSouth;
13 information from the independent consulting firms such as Frost & Sullivan,
14 Boston Consulting Group, PriceWaterhouse, and their various independent
15 consulting reports; etc. In addition, I have followed both state and federal
16 regulations of the telecommunications industry. Finally, I am a member of a
17 number of telecommunications professional associations including the Federal
18 Communications Bar Association.

19
20 **Q. What is the purpose of your testimony?**

21 A. I will testify to the policy issues in the complaint of Telecommunications
22 Resellers

1 Association against Ameritech Illinois regarding enforcement of termination
2 penalties of Ameritech's ValueLink.

3 **Q. How is your testimony organized?**

4 A. First, I will describe the characteristics of Ameritech's ValueLink tariffs.
5 Secondly, I will address how the tariffs and the accompanying contracts are
6 being enforced in terms of length of contract and nature of termination penalties.
7 Thirdly, I will discuss possible effects of the tariffs on competition and the public.

8
9 **I THE FAMILY OF VALUELINK TARIFFS**

10 **Q. Please describe ValueLink tariffs.**

11 A. ValueLink is a group of eight Ameritech discounted services aimed at business
12 customers which has been in existence since January 1, 1998.¹ They contain
13 so-called take-or-pay rates with various levels of discounts. The longer the
14 contract term, the higher the discount for the service. Also, all of these services
15 have three common features:

- 16 1) minimum annual usage commitment;
17 2) specified lengths of contracts; and
18 3) termination penalties

19 In a typical ValueLink contract, a customer chooses a minimum annual
20 usage commitment and a term of commitment ranging from twelve (12) months
21 to sixty (60) months. The ValueLink discount a consumer may earn depends on
22 these two variables.

1 If a customer does not meet the monthly minimum level of usage, the
2 balance of its committed monthly minimum bills will be added to its bills.
3 Also, a customer that terminates its contract prior to the expiration date will be
4 charged termination penalties equal to the remaining minimum annual usage
5 commitment multiplied by the remaining duration of the contract. However, a
6 customer may be exempted from these termination penalties if it meets two
7 conditions: 1) if the customer converts to another Ameritech usage plan with a
8 term either equal to or greater than the existing plan, and 2) if the new plan's
9 revenue commitment is either equal to or greater than the existing plan.
10 To illustrate, assume a customer contracts for a 3-year \$30,000 annual minimum
11 usage under the ValueLink Extra service². If this customer terminates its
12 contract after 6months, it would be required to pay for the remaining two and half
13 years (2 1/2 years), \$75,000 (\$15,000 + \$60,000), as termination penalties. The
14 only way to avoid these termination penalties is to switch to another Ameritech's
15 usage plan period which is equal to or greater than 3years with a minimum
16 commitment that is equal to or greater than \$30,000.

17
18 **II THE TERMINATION PENALTIES AND THEIR CONSEQUENCES**

19 **Q. Describe the termination penalties under the ValueLink tariffs?**

20 **A. The termination penalties under ValueLink tariffs operate as a take-or-pay**

¹ See ICC Ameritech Tariff No. 19, Part 20, Section 4.

² See ICC Ameritech Tariff No. 19, Part 20, Section 4, Original Sheet Nos. 12 -18, Issued on October 7, 1999 and Effective on October 8, 1999.

1 system. Regardless of whether a customer fulfills the contract or not, it is still
2 subject to paying exactly the same amount unless the customer switches to
3 another plan which is equal or greater both in duration and annual minimum
4 commitment.

5 **Q. What are the consequences of the termination penalties to customers,**
6 **competing carriers and the public?**

7 A. First, a customer that terminates its contract early will end up bearing
8 penalties which do not relate to the actual loss that it caused Ameritech as a
9 result of the termination. Secondly, the termination penalty will work as a
10 disincentive to customers to switch their service to any other competing carrier
11 regardless of quality of service, price and other incentives. Thus, such a
12 contract may reduce the number of customers that other competing carriers can
13 successfully solicit to switch to their service, even if they offer better quality of
14 service, price and other incentives. Even if the competing carriers are ready and
15 willing to encourage customers to switch for valid competitive reasons,
16 customers may not want to bear the financial burden of Ameritech's termination
17 penalties.

18
19 **Q. What are the possible consequences of the termination penalties to**
20 **Ameritech?**

21 A. First, Ameritech will likely be in a better position to retain these business
22 customers as the termination penalties serve as a disincentive for customers to
23 leave for competitors. Regardless of whether the customers choose to fulfill

1 their contracts or not, they are subject to paying Ameritech the minimum
2 commitment as stipulated in their contracts. It will be illogical and financially
3 impudent for any customer to switch its service from Ameritech.

4 Secondly, customers currently on ValueLink contracts will remain more or
5 less captives. The termination penalties impede competition as it is unlikely that
6 customers can be convinced to switch and pay the termination penalties.

7 Finally, ValueLink's current termination penalties are likely to result in a windfall
8 to Ameritech. The termination penalties must be paid even if the contracted
9 services are not performed. The only means of avoiding the termination
10 penalties is for the customer to switch to another equal or higher plan of
11 Ameritech.

12
13 **Q. What are the possible effects of termination penalties on resale?**

14 A. The resale of these Ameritech long-term contracts by resellers would not change
15 the original contract termination penalties. In fact, according to the resale terms
16 in ValueLink, the resellers will assume the termination penalties in question. For
17 an illustration, if an Ameritech customer with a ValueLink long-term contract is
18 resold to a reseller and that customer terminates its contract with the reseller
19 prior to the expiration of its term, the reseller will be responsible for the
20 termination penalties to Ameritech. This arrangement can be a barrier to
21 competition as resellers may not want to assume such a risk. Furthermore, in
22 the light of the termination penalties, the resale of Ameritech ValueLink will
23 certainly not be a reasonably competitive business opportunity to the resellers.

1 **Q. How can the Commission address the effects of termination penalties on**
2 **competition?**

3 A. I recommend that the Commission re-examine the terms of Ameritech
4 ValueLink contracts. Also, I recommend that Ameritech's termination penalties
5 be reduced to a level reasonably related to the loss Ameritech experiences when
6 a customer terminates a contract. The current penalties of take-or-pay should
7 be set aside because they foster anti-competitiveness in a market that is
8 currently not fully competitive and is dominated by Ameritech.

9
10 **Q. Should the Commission simply eliminate the termination penalties of**
11 **ValueLink tariffs?**

12 A. No. These termination penalties should not be totally eliminated. Both
13 Ameritech and customers enter these ValueLink contracts with the presumption
14 that each party will obtain certain benefits. On the one hand, Ameritech hopes
15 it will gain customers and definitive revenue over a period of time. On the other
16 hand, a typical customer assumes that it will obtain definitive discounted rates
17 over a specified period of time.

18 These contractual benefits notwithstanding, the resultant effect of the
19 long-term contracts has been to lock-up customers from the competing carriers
20 regardless of whether the competitors can offer lower rates or even better
21 services. I will recommend that those penalties be made relative to the actual
22 loss. In essence, the penalties should be reasonably linked to the discounts

1 given up by Ameritech. In Staff Exhibit 2.0, witness Robert Koch details a
2 reasonable termination penalty for each of the plans in this proceeding.

3

4 **Q. Does this conclude your testimony?**

5 **A. Yes.**